

# Exhibit F

April 24, 2019

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1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION  
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6 IN RE: CATHODE RAY TUBE (CRT)  
7 ANTITRUST LITIGATION,

CASE NO. 3:07-CV-05944-JST

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10 DEPOSITION OF CURTIS MILHAUPT

11 San Francisco, California

12 Wednesday, April 24, 2019  
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23 Reported by: Ashley Soevyn, CSR No. 12019

24 Job No. 796715

25 Pages 1 - 148

Curtis B. Milhaupt  
April 24, 2019

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13 Deposition of CURTIS MILHAUPT taken on  
14 behalf of the Irico Defendants, at Baker Botts, 101  
15 California Street, 36th Floor, San Francisco,  
16 California, beginning at 9:38 a.m. and ending at  
17 2:30 p.m. on Wednesday, April 24, 2019, before  
18 ASHLEY SOEVYN, Certified Shorthand Reporter No.  
19 12019.  
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April 24, 2019

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April 24, 2019

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I N D E X

DEPOSITION OF CURTIS MILHAUPT

EXAMINATION BY:

PAGE

MR. HUSTON

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Curtis B. Milhaupt  
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Curtis B. Milhaupt  
April 24, 2019

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1 San Francisco, California, April 24, 2019

2 9:38 a.m.

3  
4 CURTIS MILHAUPT,

5 having been administered an oath, was examined and  
6 testified as follows:

7  
8 EXAMINATION

9 BY MR. HUSTON:

10 Q Good morning, Professor Milhaupt. How  
11 are you?

12 A I'm doing well. Thank you. How are you?

13 Q Thank you for being here. My name is  
14 Peter Huston, and I represent the Irico Defendants  
15 in this case, and I will be taking today's  
16 deposition asking you some questions. I would like  
17 to start by just asking you whether you've had your  
18 deposition taken before?

19 A I have.

20 Q And how many times?

21 A Once.

22 Q And when was that?

23 A That was, if memory serves me, it was in  
24 January of 2016.

25 Q All right. So that's pretty recently,



1 it's been an ongoing learning process of research,  
2 collaboration, interviews, and study.

3 Q How long did that sabbatical last?

4 A It was the fall of 20 -- fall of 2006.

5 Q So a few months?

6 A Yes.

7 Q Can you spell the name of the university  
8 for our court reporter and for myself?

9 A Certainly. Tsinghua. I believe the  
10 English spelling is T-S-I-N-G-H-U-A.

11 Q And so your first published scholarship  
12 on the subject was in 2013; is that right?

13 A Correct.

14 Q Would you consider yourself an expert on  
15 Chinese law?

16 A In general, no.

17 Q And probably the answer to that question  
18 presumes the answer to the next, but would you  
19 consider yourself an expert on Chinese Criminal Law?

20 A No.

21 Q And you mentioned that you took up  
22 Mandarin. Do you speak Chinese?

23 A No. I have some familiarity with the  
24 language from my period of study, and I also have  
25 some familiarity with Chinese characters because of

1 BY MR. HUSTON:

2 Q Okay. What is your -- put in your words,  
3 what you believe that test to be.

4 A Well, the statute has essentially two  
5 different parts. One is an agency or  
6 instrumentality test, which asks whether an entity  
7 is majority owned or wholly owned by a government.  
8 And there is a second test, which asks whether  
9 entity, which does not fall into that first  
10 category, which is quote/unquote organ of a foreign  
11 government.

12 Q And I've seen those two prongs, if you  
13 will, referred to as the ownership test and the  
14 organ test. Does that ring a bell with you?

15 A Well --

16 MR. RUSHING: Object to the form.

17 THE WITNESS: I mean, I'm not sure I can  
18 say it rings a bell with me. Those sound like  
19 reasonable ways of referring to a test. I'm not  
20 sure I've read that or seen that as the definitive  
21 way of describing those tests.

22 BY MR. HUSTON:

23 Q Fair enough. Is it your understanding  
24 that the Irico Group is wholly owned by a political  
25 subdivision of the Chinese government?

1 A Yes.

2 Q Is it fair to say that the bulk of your  
3 declaration concerns Irico Display?

4 A Yes.

5 MR. RUSHING: Object to the form.

6 BY MR. HUSTON:

7 Q Are all of the opinions that you've  
8 reached in this engagement reflected in your  
9 declaration?

10 A Yes.

11 Q Is it accurate to say that you do not  
12 express an opinion on the ultimate question of  
13 whether the Foreign Sovereign Immunities Act applies  
14 or doesn't apply?

15 A Yes.

16 Q Irico Display is part of the Irico Group,  
17 correct?

18 A That's correct.

19 Q And in that group, the Irico Group is the  
20 core company, correct?

21 MR. RUSHING: Object to the form.

22 THE WITNESS: Yes.

23 BY MR. HUSTON:

24 Q Turning back to your CV, are there any  
25 publications or scholarship that you've authored on

1 the subject of China that aren't reflected on your  
2 CV?

3 A Not to my knowledge.

4 Q Are you -- do you have any current plans  
5 or thought that you might offer additional opinions  
6 in the future in addition to what's been set forth  
7 in your declaration?

8 A In this case?

9 Q Correct. Correct.

10 A I have no current plans to do so.

11 Q Have you been asked to do that?

12 A No, I have not.

13 Q Okay. Looking at paragraph 8 of your  
14 declaration, there is an article referenced about  
15 halfway down the paragraph, "Is the US Ready for FDI  
16 from China? Lessons from Japan's Experience in the  
17 1980s."

18 Do you see that?

19 A Yes, I do.

20 Q What does FDI stand for?

21 A Foreign direct investment.

22 Q Is that referring to investments that  
23 Chinese entities or individuals would be making into  
24 the United States?

25 A Correct.

1 MR. RUSHING: Object to the form.

2 THE WITNESS: I would hesitate to give my  
3 own characterization. I'm not a political  
4 scientist. The term "party-state" is commonly used  
5 as a kind of shorthand for this parallel structure,  
6 but I would not hold myself out as having particular  
7 expertise in describing or explaining Chinese  
8 governments or organizations.

9 BY MR. HUSTON:

10 Q What, in your mind, what is the role of  
11 the communist party in China?

12 MR. RUSHING: Object to the form.

13 THE WITNESS: It is a -- I think as I  
14 stated earlier, it is a political party with a  
15 monopoly on political power in China.

16 BY MR. HUSTON:

17 Q Turn to page 525 of Exhibit 8537. And  
18 down at the bottom of the page, there is a sentence  
19 that maybe gets at what you're talking about. It  
20 says:

21 "SASAC shares decision right on senior  
22 management appointments with the  
23 Chinese Communist Party (CCP) in a  
24 highly institutionalized arrangement  
25 whereby the top positions in the most

1 China. The communist party is, I don't think it's a  
2 controversial statement to say that the party itself  
3 is kind of above the law. And so at some level, all  
4 organizations in China are subject to the authority  
5 of the communist party. But I think this is -- so I  
6 would say that I think this is a little bit  
7 overbroad and also I would not equate the communist  
8 party necessarily with the party-state as we  
9 discussed earlier.

10 BY MR. HUSTON:

11 Q The next sentence reads:

12 "The Party-state controls SOEs through  
13 both general requirements on policy  
14 compliance and specific powers such as  
15 appointing senior executives of SOEs."

16 Do you agree or disagree with that?

17 A Again, I think this is conflating several  
18 different things here. I would be more specific.  
19 SASAC as a matter of government, as a matter of law  
20 and a matter of government organization, it is SASAC  
21 that has the appointments power. Now, SASAC does  
22 have within it a party committee. The extent to  
23 which that committee is actually calling the shots,  
24 I could not tell you, but I think that this is  
25 improperly eliminating SASAC from the picture. And

1 I would say further, both the general requirements  
2 on policy compliance, that's a very general  
3 statement -- pardon me. That's a very general  
4 statement. I really don't know what that would be  
5 referring to.

6 Q So the next highlighted section says:  
7 "State and business maybe very close in  
8 some other economies with state-owned  
9 enterprises, such as Korea, Japan,  
10 Singapore or Brazil, but a degree of  
11 direct control over state-owned  
12 enterprises by an economy's ruling  
13 parties is rarely seen in other open  
14 economies."

15 You've mentioned that you are a professor  
16 of comparative law and that you've looked at some of  
17 these other countries. Do you see a difference in  
18 how state-owned enterprises run in China versus  
19 these other countries mentioned?

20 A The most relevant would be Singapore.  
21 Korea and Japan have relatively few SOEs. Singapore  
22 uses a holding company model, Temasek -- excuse me.  
23 In terms of the size of the capital market under a,  
24 at least a sensible government control, Singapore  
25 would be similar to China. Singapore has a

1 different governmental structure for -- different  
2 ownership structure for its SOES. That's certainly  
3 true.

4 Q The next highlighted sentence reads:

5 "... the Party-state in China directly  
6 controls not only the personnel but  
7 also sometimes the operation of  
8 state-owned enterprises, bypassing the  
9 legal governance structure consisting  
10 of the board of directors and  
11 management."

12 Do you agree with that or disagree?

13 MR. RUSHING: Object to the form.

14 THE WITNESS: Again, I -- the party-state  
15 directly controls not only the personnel but also  
16 sometimes the operation of SOEs. I mean, I can only  
17 restate what I've said, which is that SASAC has the  
18 authority to appoint personnel in the -- at the  
19 group level, not formally the party. The party may  
20 be involved in that. I don't know. There is, as I  
21 said, a party committee within SASAC. And the party  
22 generally is involved in personnel matters. As to  
23 the next part of this sentence, also sometimes the  
24 operation of SOEs bypassing the governance  
25 structure, if this is a statement about what may



1 Q And then the next sentence reads:

2 "Political governance is a  
3 CCP-dominated process that actually  
4 controls personnel appointments and  
5 decision-making in SOEs."

6 CCP refers to the Communist -- the  
7 Chinese Communist Party, correct?

8 A Correct.

9 Q And, you know, we've discussed this  
10 already, but I take it, you take issue with that  
11 sentence?

12 A In the same way that I did before. It's  
13 conceivable that the party is -- can operate through  
14 SASAC, but that is certainly not the way the system  
15 is structured.

16 Q And then the next sentence says:

17 "The two structures run separately,  
18 although the same group of players  
19 participates in the decision-making  
20 processes of both structures."

21 A Well, I think what this is in reference  
22 to is the fact that, as I've explained in some of my  
23 scholarship as well and as we alluded to earlier,  
24 there is a corporate structure and there is a  
25 parallel party committee structure internal to the

1 firm, which stands outside the corporate law. And  
2 it is common for senior executives in the company's  
3 under SASAC's supervision to wear two hats, a  
4 corporate hat and a party hat. I think that's what  
5 he's referring to.

6 Q And then the last sentence in this  
7 highlighted portion says:

8 "In most cases, the informal, nonlegal,  
9 rules in political governance, which  
10 run in the shadows, prevail over the  
11 legal rules in China's corporate and  
12 securities laws."

13 What is your reaction to that answer?

14 MR. RUSHING: Object to the form.

15 MR. HUSTON: Do you agree with that  
16 statement?

17 MR. RUSHING: Object to the form.

18 THE WITNESS: Well, you know, scholarship  
19 has to be pitched at a certain level of generality,  
20 and so as a very general statement, I would say that  
21 he's certainly correct that there are these parallel  
22 structures. Where he says, "In most cases, the  
23 informal, non-legal rules" et cetera "prevail over  
24 the legal rules," again, I guess I would take issue  
25 to that particularly with respect to publicly these

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1 other shareholders, non-state  
2 shareholders (if any) of the SOEs have  
3 virtually no 'voice' when it comes to  
4 crucial company decisions."

5 Do you see that?

6 A I do.

7 Q And do you think that that description  
8 holds true for state-owned enterprises in the 2007  
9 time period?

10 MR. RUSHING: Object to the form.

11 MR. HUSTON: Let me rephrase it.

12 BY MR. HUSTON:

13 Q What -- how much voice do you believe  
14 that minority non-state shareholders had in  
15 state-owned entities in 2007?

16 A I think they had the same degree of voice  
17 that a minority shareholder in a U.S. or Japanese or  
18 Korean company would have. That is not a lot of  
19 voice, but I don't think that's unique to China in  
20 anyway.

21 Q Okay. With respect to the power of  
22 shareholders in Irico Display, do you have an  
23 understanding of how voting worked at Irico Display,  
24 what shareholders got to vote on, and how often, and  
25 what sort of decisions they voted on?